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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-642

MILTON J. SHAPP, Governor; GERALD GORNISH, Acting Attorney General; CARYL M. KLINE, Secretary of Education; GEORGE S. PULAKOS, Secretary of Transportation; LEONARD BACHMAN, M.D., Secretary of Health; KENT D. SHELHAMER, Secretary of Agriculture; MAURICE K. GODDARD, Secretary of Environmental Resources, and the GOVERNOR'S JUSTICE COMMISSION,
Appellants

v.

ROBERT E. CASEY, State Treasurer and THE GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA,
Appellees

On Appeal From the Supreme Court of Pennsylvania

BRIEF OF THE AMERICAN COUNCIL ON EDUCATION, ET AL., AS AMICI CURIAE IN SUPPORT OF THE JURISDICTIONAL STATEMENT OF MILTON J. SHAPP, ET AL.

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INTRODUCTION AND LIST OF AMICI CURIAE

The amici curiae in this case include the American Council on Education, which is a nonprofit corporation organized under the laws of, and located in, the District of Columbia. Founded in 1918, the Council is a membership organization of 1291 nonprofit institutions

of higher education and 169 educational associations. The Council is the major coordinating body in post-secondary education.

Also included as amici curiae are: American Association of State Colleges and Universities; National Association of State Universities and Land-Grant Colleges; American Association of Community and Junior Colleges; Association of American Universities; National Catholic Education Association; National Association for the Advancement of Colored People; American Federation of Teachers; National School Boards Association; American Personnel and Guidance Association; League of United Latin American Citizens; El Congreso Nacional de Asuntos Colegiales; Association of American Publishers; A. Philip Randolph Institute; American Library Association; United States Student Association; American Association of Community College Trustees; Association of Governing Boards; Association of American Colleges; Association of American Medical Colleges; National Association for Equal Opportunity in Higher Education; National Association of Student Financial Aid Administrators; Council for the Advancement and Support of Education; Council for the Advancement of Small Colleges; National Association of Independent Colleges and Universities; Council of Graduate Schools; Committee for Public Higher Education, New York; Commonwealth Students of Pennsylvania; Association of Pennsylvania State College and University Faculty; and the Association of Jesuit Colleges and Universities.

The amici curiae respectfully request this Court to note jurisdiction in this case and to permit the filing of briefs and oral argument by the parties involved.

Having obtained the consent of the parties to the filing of an amici curiae brief, the amici curiae will submit a brief on the merits of this case should this Court note jurisdiction.

We refer this Court to the JURISDICTIONAL STATEMENT of appellants with respect to the CITATION OF OPINIONS BELOW, the STATEMENT OF JURISDICTION, the recitation of STATUTORY PROVISIONS INVOLVED and the STATEMENT OF THE CASE.

CONSENT OF PARTIES

This amici curiae brief is being filed with the consent of all parties to this proceeding. Letters of consent of all parties have been filed with the Clerk of Court.

CONSTITUTIONAL PROVISIONS INVOLVED

Article I, section 8, clause 1 of the Constitution of the United States provides:

> The Congress shall have power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

Article VI, clause 2 of the Constitution of the United States provides:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Article III, section 24 of the Pennsylvania Constitution provides:

> No money shall be paid out of the treasury, except on appropriations made by law and on warrant issued by the proper officers; but cash refunds of taxes, license fees and other charges paid or collected, but not legally due, may be paid as provided by law, without appropriation from the fund into which they were paid on warrant of the proper officer.

QUESTION PRESENTED

Is the state law in question requiring the Pennsylvania General Assembly to appropriate all Federal funds before such funds can be expended by a state agency pursuant to a Federally approved plan Constitutional, or does it violate the provisions of the Supremacy Clause and unconstitutionally limit the spending power of Congress under Article I, section 8?

GENERAL STATEMENT OF BACKGROUND AND OF INTEREST OF AMICI CURIAE

The amici curiae believe that the issue with respect to this case is substantial and that the case should be considered and decided by this Court. The principle involved in this case is of great significance to the development of constitutional law and our Federal system of government. It presents the important question of whether the Article I, section 8 spending power can be limited consistent with the Supremacy Clause by a state law empowering a state legislature to appropriate Federal funds already appropriated by Congress and duly expended by a Federal agency consistent with Federal law. The power of Congress to effectively authorize and appropriate Federal monies for the general Welfare, with necessary conditions, is under

direct attack in this case. The result of allowing this decision of the Supreme Court of Pennsylvania to stand will be the impoundment of Federal funds by the state legislature, the involvement of the state legislature in the administration and management of Federal grant programs, and lessened effectiveness of Federal programs providing for the nation's underprivileged, and for research and education. The specific interests of the amici curiae are in the areas of education, research and related areas rather than in the area of law enforcement and criminal justice, the precise subject of controversy herein. However, the decision below directly affects programs of interest to us and establishes a principle which substantially affects the areas of education and research.

The amici curiae are associations of educational institutions and professionals and of those individuals who benefit from Federal education programs, as well as other Federal programs in the social welfare area. In the past two decades, the Congress of the United States has rapidly expanded the role of the Federal government in the areas of education and research. The holding of the Pennsylvania Supreme Court would, however, result in major changes in these programs in Pennsylvania, and establish a principle very harmful to these programs generally.

The fiscal year FY 1979 budget estimate for education indicates that about $22.7 billion of Federal aid is provided to education. "Budget of the United States Government, Fiscal Year 1979, Special Analysis", ("Budget"), page 214. Of this estimated amount, about $9 billion relates to higher education and is provided to colleges and universities or their students. "Budget", *supra,* page 217. The remainder relates pri-

marily to elementary and secondary education. In addition, approximately $3.6 billion is estimated to be expended by the Federal government for research in colleges and universities, primarily in the areas of biomedical research, other basic scientific research, energy research, and research in aeronautics and space. "Budget", *supra,* page 310.

In the areas of higher education and research, Federal activity has been undertaken in different ways under different statutory conditions. First, Federal grants are provided directly to educational institutions for research activity such as grants authorized for biomedical research under the Public Health Service Act, Title V, 42 U.S.C.A. §§ 281-289, and for training in areas of specialized endeavor such as medicine, Public Health Service Act, Title V, 42 U.S.C.A. § 295f. Some Federal aid to higher education, other than for research or specialized training, is also provided through grants directly to the institutions such as the grants to support developing institutions and community colleges, 20 U.S.C.A. §§ 1051 to 1056, and § 1135, and the special programs to seek talented minority students and assist them in obtaining a higher education, 20 U.S.C.A. § 1070d-1. Second, at least one Federal grant program for assistance to educational institutions provides that assistance by means of grants to state education agencies. Community Service and Continuing Education Programs, 20 U.S.C.A. § 1001, et seq. Third, student aid is provided to assist low income students to obtain an education with some forms of such aid involving the direct provision of funds to students. Other forms of aid are provided to schools or to state educational agencies, which in turn administer the aid for the students' benefit. Student aid of the former

variety is exemplified by the Basic Educational Opportunity Grant program, 20 U.S.C.A. § 1070a, under which a student is guaranteed a scholarship in the amount of $1800 minus the family contribution expected based upon family resources. An example of the latter variety of student aid is the Supplemental Educational Opportunity Grant program, 20 U.S.C.A. § 1070b, under which eligible institutions of higher learning receive Federal funds to provide scholarship aid to needy students in addition to other aid that might be received by those students. Aid provided to state education agencies which make scholarship grants to students in need of such assistance is exemplified by the State Student Incentive Grant program, 20 U.S.C.A. § 1070c.

Most Federal aid programs providing assistance to elementary and secondary schools and students, like the State Student Incentive Grant program or the Community Service and Continuing Education Programs, provide the financial assistance to state education agencies which disburse the Federal funds to local education agencies. See for example Title I of the Elementary and Secondary Education Act, 20 U.S.C.A. § 236, et seq.

The connection between these many Federal aid programs in the education and research areas and the state, which then triggers the application of state appropriation laws such as the ones at issue in this case, is the fact that some of these Federal aid programs allocate funds to state education agencies and others make funds directly available to educational institutions, many of which are state institutions. About 47.5% of all colleges and universities are state higher educational institutions and are treated as agencies of state

government for budgetary and other purposes. A. Podolsky and C. R. Smith, "Education Directory, Colleges and Universities, 1977-78", P. XXVII. About 80% of all postsecondary students are in state institutions. "Condition of Education", by National Center for Educational Statistics, 1978 Edition.

The effective execution of these many Federal programs, according to the conditions established by Congress and the relevant Federal agencies, is of direct interest to the amici curiae. The educational institutions represented by the amici curiae have an interest in the receipt of needed Federal aid for students, for research and for other programs, and its use according to Federal conditions without unauthorized state legislative intervention. The individual beneficiaries of these programs, both student aid and special education and social service programs, have an interest in the continued receipt of Federal aid and assistance without the unauthorized interference of state legislatures. The intervention of state legislatures to preempt the spending power of Congress is a great danger to continued Federal aid to our institutions and constituents and a dangerous precedent with respect to all Federal aid programs in the education or social welfare field which involve state agencies or institutions as recipients.

THE SUBSTANTIAL NATURE OF THE QUESTION INVOLVED

The specific controversy posed by this case involves the failure of the General Assembly to appropriate Federal funds allocated to Pennsylvania for the support of the Office of the Special Prosecutor. OPINION, SUPREME COURT OF PA., JURISDICTIONAL STATEMENT, page 12a. In their JURISDICTIONAL STATEMENT, appellants state that the refusal of the Legislature to appropriate the Federal funds resulted in the demise of that Office. JURISDICTIONAL STATEMENT, page 14. Under 1976 Pa. Laws 469, Pa. Stat. Ann. tit. 72, §§ 4611-4617 (Supp. 1978), it is provided that Federal funds be deposited in the General Fund of the State and shall be available for appropriation by the General Assembly. The State Treasurer cannot release funds without such an appropriation. Federal funds not appropriated remain part of Pennsylvania's General Fund.

A. The Power of Congress To Spend for the General Welfare

Under Article I, section 8, clause 1 of the United States Constitution, the Congress is specifically provided the power to spend money for the general Welfare. That grant of power is expressed in the authority to "provide for the common Defense and general Welfare of the United States". See *Steward Machine Co.* v. *Davis,* 301 U.S. 548 (1937), and *Helvering* v. *Davis,* 301 U.S. 619 (1937) for the elaboration of that principle. Essentially, this Court has held Congressional spending authority to be limited only by individual rights granted under the Bill of Rights, *Flemming* v. *Nestor,* 363 U.S. 603 (1960), and by the requirement that the Federal interest involved be general or national, not private, *Helvering* v. *Davis,* 301 U.S. 619 (1937). The power of Congress to establish conditions upon the use of these Federal monies as a means of prescribing the national objectives to be achieved and the necessary and proper means of achieving them has long been recognized by this Court. *Oklahoma* v. *U.S. Civil Service Commission,* 330 U.S. 127 (1947). In *Helvering* v. *Davis, supra,* at page 645, Justice Cardozo gave clear guidance as to the nature of this Congressional power to spend and conditon spending to effectuate national purposes. He stated that "When money is spent

to promote the general welfare, the concept of welfare or its opposite, is shaped by Congress, not the states". Recently in *Buckley* v. *Valeo,* 424 U.S. 1 (1976), this Court has reaffirmed that most basic of Constitutional principles. The General Welfare Clause as it was explained in *Buckley* v. *Valeo, supra,* is a grant of power "the scope of which is quite expansive, particularly in view of the enlargement of the power by the Necessary and Proper Clause". *Buckley* v. *Valeo, supra,* at page 90.

It is just this expansive and enlarged Congressional authority, and the extent of state power to limit it, which is at issue. Can the Pennsylvania General Assembly exercise appropriation power over Federal money when the Congressional statute creating the Federal spending program does not authorize such action? Basically, this Court has held the spending power, enlarged through the Necessary and Proper Clause, plenary, and generally not limited by the Tenth Amendment's reservation of powers to the states, nor by state statutes such as the ones in question in this case. State statutes interfering with the expenditure of Federal funds pursuant to Federal law would unconstitutionally limit the spending power of Congress and violate the Supremacy Clause. *King* v. *Smith,* 392 U.S. 309 (1968).

B. The Supremacy Clause and the Supremacy of Federal Law Where State Statutes Are Inconsistent With Federal Law

State laws which have the effect of nullifying programs duly authorized by Congress using its specified Constitutional powers have long been held to violate the Supremacy Clause of the Constitution and therefore to be invalid, at least as applied to the Federal program in question. *McCulloch* v. *Maryland,* 4 Wheat. 316 (1819); *King* v. *Smith,* 392 U.S. 309 (1968); *Townsend* v. *Swank,* 404 U.S. 282 (1971). The spending power cases such as *King* v. *Smith,* 392 U.S. 309 (1968), and *Townsend* v. *Swank, supra,* have uniformly held that power immune from state laws which prevent the proper execution of the national objectives involved.

The supremacy of Federal grant-in-aid and other spending statutes relative to state statutes such as the one in question in this case is of equal importance in many respects to the necessary supremacy of Federal law reflected in *McCulloch* v. *Maryland,* 4 Wheat. 316 (1819). In *McCulloch* v. *Maryland, supra,* the issue involved the powers of the Bank of the United States, an institution of great importance in dealing with the serious fiscal plight of our nation in the early 19th Century. Today, the issue involves a power of Congress no less significant, the power to authorize and spend funds to deal with matters of serious national interest such as poverty, unemployment and education. Also involved is the Congressional power to select from among various alternatives the necessary and proper means to achieve these Federal ends and to have these means executed without interference from state action which would render these Federal activities ineffective.

C. The Specific Congressional Determinations of Necessary and Proper Means of Exercising the Spending Authority in This Case and the Supremacy of Such Means Over Inconsistent State Law

In this case, Congress clearly exercised its well recognized power to specifically shape the goals and programs involving the general welfare of the nation in the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C.A. § 3701, et seq. As Justice Cardozo stated in *Helvering* v. *Davis,* 301 U.S. 619 (1937), at page 645: "When money is spent to promote the gen-

eral welfare, the concept of welfare or the opposite, is shaped by Congress, not the states". Any state laws conflicting with the Congressionally mandated means clearly would violate the Supremacy Clause. *McCulloch* v. *Maryland,* 4 Wheat. 316 (1819); *King* v. *Smith,* 392 U.S. 309 (1968).

The intent of Congress with regard to the means of selecting recipients of aid and disbursing such aid to recipients under the statute involved in this case is abundantly clear. It is equally clear in those many Federal aid programs affecting education such as the various student aid and educational grant programs described previously in this brief. State laws interfering with the execution of these programs through the means set forth by the Congress are also invalid under the Supremacy Clause.

The general purpose of the Law Enforcement Assistance Program authorized by the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C.A. § 3701, et seq., is to provide financial and other assistance to encourage states and units of general purpose local government to develop comprehensive law enforcement and criminal justice plans and to carry out programs and projects to improve and strengthen law enforcement and criminal justice in the state. 42 U.S.C.A. §§ 3721 and 3731(a). Federal assistance is also provided to establish the state planning agencies and it is specified that such agencies shall be subject to the jurisdiction of the chief executive in the state. 42 U.S.C.A. §§ 3722 and 3723. The plan to be developed by this agency designated by the Governor is to "define and develop" the programs and projects in the law enforcement and criminal justice system to be carried out. 42 U.S.C.A. § 3723(b). The submission and approval of this plan is a condition of receipt of Federal funds to support programs in the state and the plan is the basis for expenditures by the state. 42 U.S.C.A. § 3732. The plan must specify that the state planning agency is responsible for "the administration of such grants by the State planning agency". 42 U.S.C.A. § 3733(a)(1). Grants are made by the state planning agency to local governments and funds are disbursed when the "state planning agency determines that . . . a plan or application is in accordance with the purposes" of the program "and in conformance with the plan". 42 U.S.C.A. §§ 3734(a). Furthermore, 42 U.S.C.A. § 3763, in describing the authority and responsibility of the Justice Department in this program, states that the Department shall review "the execution of the comprehensive plan to determine whether the State planning agency is coordinating and controlling the disbursement of the Federal funds provided under this Chapter".

Clearly, therefore, at the state level, it is the state planning agency which is to establish the priorities and projects to be funded since it must define those projects in its state plan and it must make the decisions as to who receives grants and the amounts thereof, as well as controlling the disbursement of funds. Since the state planning agency is clearly required to coordinate and control the disbursement of the Federal funds involved, it seems clear that the state legislature cannot do so. It seems clear that the power of the legislature to appropriate funds is the power to coordinate and disburse the funds. Disbursement cannot be controlled if the state legislature determines funding priorities and policies as it does through the appropriation power.

It is also well settled that state plan requirements and other Federal conditions related to the receipt of Federal aid represent contractual undertakings and are binding on the states or other entities receiving these funds. *Townsend* v. *Swank*, 404 U.S. 282 (1971); *King* v. *Smith*, 392 U.S. 309 (1968); *Ely* v. *Velde*, 497 F.2d 252 (1974); *United States* v. *County School Board of Prince George County, Va.*, 221 F. Supp. 93 (E.D. Va. 1963). State laws and actions which nullify or render inoperative the Federal conditions of participation in the grant programs are invalid exercises of state authority since they contravene the provisions of the Supremacy Clause and unconstitutionally limit the exercise of the spending power of Congress. *Townsend* v. *Swank, supra; King* v. *Smith, supra.* These two cases are directly on point with regard to the issues in this case.

Quite clearly, the Omnibus Crime Control and Safe Streets Act vests the authority to execute the Federal program involved in the Justice Department at the Federal level and in the Governor and his designated state planning agency at the state level. It does not vest such powers in the state legislature. The Congress has established a clear and coherent scheme under which Federal spending to achieve significant national purposes is to be executed and administered by the executive branches of government at the Federal and state levels. Those two agencies enter into agreements pursuant to Federal law to achieve the Federal objectives. These agreements constitute contracts and Federal law governs these contracts. State legislation interjecting the state legislature into this scheme as the agency controlling the flow of Federal funds is totally inconsistent with this statutory scheme and violates the Supremacy

Clause and unconstitutionally limits the power of Congress to spend for the general Welfare.

In addition, to the issue of the supremacy of Federal law, there is also the issue of a state law impairing a contract between the Federal agency and state agencies involved in implementing the program as the paragraph above indicates.

In the education field, execution of grant-in-aid programs is similar to that in the law enforcement field. Agreements are generally made between the Department of HEW and either state education agencies or universities and colleges, many of which are state institutions. These state colleges and universities are usually established under state constitutional or statutory law, which vests sole authority for the governance of such institutions in boards of trustees or regents. The grant agreements between those institutions and the Federal government are, in our opinion, equally immune from state legislative intervention unauthorized by the Federal statute in question.

It should be noted that Congress specifically dealt with the role of state legislatures in the Law Enforcement Assistance Program in addition to specifically assigning administration and spending authority to the state planning agencies. Congress assigned only two very limited roles to the state legislatures. In 42 U.S.C.A. § 3726, the state legislature is given a specific, but very limited, power to undertake an "advisory review" of the state plan developed by the state planning agency prior to its submission to the Justice Department for review and approval. The power of review is limited to an advisory one. Had the Congress wanted to expand that power to include the authority to appropriate and disburse funds, it could have done so. It

has not! The only reference to state legislative power to appropriate is one limited to appropriating any state matching share needed for this program. 42 U.S. C.A. § 3724. This power to appropriate the state funds needed is the second of the two specific authorities given the state legislature.

That the Congress knew how to vest appropriation power over Federal funds in state legislatures is clear from those very few instances where it has chosen to do so. See *King County, Washington* v. *Seattle School District No. 1,* 263 U.S. 361 (1923) dealing with state legislative power to appropriate revenues received from national forest reserves to public roads and public schools; also see State and Local Fiscal Assistance Act of 1972, 31 U.S.C.A. § 1221, et seq.

Also related to the question of authority to spend Federal funds and Congressional spending authority in this case are the cases dealing with the matter of impoundment of Federal funds by Federal agencies. The integrity of Congressional authorizations and spending has been upheld by this Court and lower courts in recent years against incursions by the Executive Branch. *Train* v. *City of New York,* 420 U.S. 35 (1975); *Local 2677, the American Federation of Government Employees* v. *Phillips,* 358 F. Supp. 60 (D.D.C. 1973). As those two cases indicate, when Federal law removes discretion from an executive agency of government to affect spending, that law must be complied with. Can it be that state legislatures may now impound duly authorized and appropriated Federal funds as the Pennsylvania General Assembly has done in this case with no explicit Federal statutory authority to do so when the President cannot? The Federal statute in this case gives no specific discretion whatsoever over

the spending of Federal funds to the General Assembly. It vests that power in the state planning agency.

D. Lack of Adequate Independent State Grounds for Decision

While the General Assembly may be the general policy-making body under the Pennsylvania Constitution, the Pennsylvania Supreme Court has overly simplified the issue in this case by reasoning that the General Assembly needs authority to appropriate all Federal funds in order to exercise that power. See JURISDICTIONAL STATEMENT, page 20, citing the opinion in *Shapp, et al.* v. *Sloan, et al.* by the Pennsylvania Supreme Court. The power of the Congress to authorize and appropriate Federal money to achieve national purposes and the power of the Pennsylvania General Assembly to determine what programs and institutions will be established in Pennsylvania in areas of traditional state concern can be accommodated without the General Assembly being empowered to appropriate Federal funds. The Supreme Court of Pennsylvania has taken the position that this case turns essentially on the broad authority of the General Assembly under State law. The General Assembly in its law-making role can authorize the creation of State institutions and enable them to carry out specific purposes and only those purposes. Likewise, it can repeal authority or specifically prohibit the exercise of authority by state institutions. But the power to control the flow, direction and conditions applicable to duly appropriated Federal funds must be created by the Federal laws authorizing or appropriating those funds. *Townsend* v. *Swank,* 404 U.S. 282 (1971). A state legislature cannot constitutionally prevent appropriated Federal funds from being applied to their Federal purposes, nor determine particular uses inconsistent with Fed-

eral purposes, once the state has established the necessary institutions and complied with the Federal requirements which are preconditions to the allotment of Federal funds to the state. *Townsend* v. *Swank,* 404 U.S. 282 (1971); *King* v. *Smith,* 392 U.S. 309 (1968). In this case, the statute authorizing the Law Enforcement Assistance Program, 42 U.S.C.A. § 3701, et seq., like the Social Security Act provisions in *Townsend* v. *Swank, supra,* does not empower the General Assembly to take the actions it has taken with respect to the use of Federal funds (failing to appropriate and release them for use according to the Federal conditions). State legislatures are generally empowered by state law to establish, disestablish, or limit the powers of state agencies, but once such agencies exist and duly act to participate in a Federal program, then the legislature cannot interfere with Federal money in ways inconsistent with the Federal provisions enabling the operation of the Federal program. If the state legislature had such power, the Congress would be quite powerless to spend funds for the general Welfare according to means it believed necessary and proper, whenever those means in any way involved a state agency or institution.

It should also be noted that the citizens of the states are well represented in the Congress of the United States, and that this representation is germane to the question of balancing the Federal and state interests involved in this case. This political representation is a substantial safeguard to Congressional action which might adversely affect state legislatures. It is a very significant safeguard to protect the delicate balance between state and Federal governments inherent in our Federal system. See Wechsler, *The Political Safeguards of Federalism: The Role of the States in the Composition of the National Government,* 54 Colum. L. Rev. 543 (1954). The effective political representation of states and their legislatures is best evidenced by the substantial role in the Federal Revenue Sharing Program, State and Local Fiscal Relief Assistance Act of 1972, 31 U.S.C.A. § 1221, et seq., of state government and state legislatures which determine the uses for Federal funds in that program. Such powers for state legislatures are not found in 42 U.S.C.A. § 3701, et seq., or in any of the other Federal laws under which Federal funds involved in this case were appropriated.

E. Harm Resulting From Pennsylvania Supreme Court Decision

We submit that there are very substantial questions regarding the supremacy of Federal law and the power of Congress to spend for the general Welfare involved in this case. To fail to note jurisdiction and to let the Supreme Court of Pennsylvania decision stand will seriously undermine the Congressional spending authority and set back important Federal aid programs in education and many other areas of national importance. We therefore urge that the Court note jurisdiction in this case.

That substantial harm will result from this decision of the Pennsylvania Supreme Court is apparent. State legislatures with powers similar to those in Pennsylvania may hereafter refuse to spend Federal money already appropriated and allocated to the state as is the case in this matter. Programs to which Federal and state commitments have been made will be eliminated as evidenced by the demise of the Office of the Special Prosecutor in this case. The administration of Federal aid will be delayed due to the interposition of state legislatures in matters of administration, and

this will be particularly so in those 35 states with very short legislative sessions. State schools will be at a disadvantage in seeking Federal aid compared to private schools, for state schools will have their Federal aid subject to state legislative direction. Finally, education and research, areas traditionally left to the discretion of universities and Federal agencies operating under carefully structured Federal review procedures (e.g., outside peer review of research and training grants), may possibly be subject to political intrusion by state legislatures.

Upon the resolution of this case stands the integrity of Federal spending to achieve substantial national interests in education, research and social welfare.

CONCLUSION

We therefore urge that this Court note jurisdiction, receive full briefs on the merits and hear oral arguments in this case.

Respectfully submitted,

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